IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3242 OF 2006

Mrs.Suvarna G.C. .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.A.P.Mundergi, Senior Advocate with Mr.M.K.Kocharekar i/b. Manohar Ramsinghani for applicant

Mr.S.S.Pednekar, A.P.P. for State.

Mr.Rajesh Yadav for complainant.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 5th September 21006.

P.C.

. Heard Mr.Mundergi, learned Senior Counsel for applicant, Mr.Pednekar, A.P.P. for State and the Advocate appearing for original complainant.

2. Applicant is apprehending arrest in C.R.No.94 of 2006 which has been registered with Bhandup Police Station, Mumbai.

3. The submission of Mr.Mundargi is that the criminal proceedings are initiated as a counter blast and with a view to defeat applicant's rights in a pending civil suit so also in proceedings arising out of change Report presently pending before Charity Commissioner. Further, Mr.Mundargi submits that the applicant is working as a Principal of the school which is managed by the Trust. He submits that the applicant joined the school and later on became member of the Trust. She became headmistress in 1988. Applicant was thereafter elected as Treasurer of the Trust, in a meeting convened of

the General Body held on 6th January 2002. Meeting was held in pursuance to notice convening the same with Agenda appended thereto. After the committee was constituted as per the trust deed, a change report was filed on 21st January 2002. Mr.Mundergi submits that the change report was accepted on 11th June 2002.

4. On 7th April 2005, after lapse of 3 years, two members viz., Sunder Shetty and one Nagappa Pujari filed a revision application before Charity Commissioner, challenging the decision to accept the change report. This revision application is pending. Applicant has been rendering services as Headmistress and Treasurer from the time the change report has been accepted till date. Now, with a view to displace the applicant, present complaint/ F.I.R. is filed by this very revision applicants alleging therein that the President, Secretary and the applicant have not been properly elected,

rather they have colluded with each other and a false and bogus proceedings/minutes of meeting have been drawn up. The meetings are allegedly attended by persons who are not alive. He submits that all such grievances are forming part of the pending proceedings before the Charity Commissioner and with a view to prevent the applicant from exercising her rights as a Trustee/Treasurer and Headmistress and to defeat and frustrate Suit No.3520 of 2006 that the subject F.I.R. was lodged as an after thought. The entire case is false, bogus and with a view to harass the applicant.

5. The applicant has in pursuance of the interim directions of the sessions court attended police station as and when summoned on the dates specified in the order. The applicant is willing to extend all such cooperation including handing over copies of the books of accounts, bank statements etc. In such circumstances, custodial

interrogation is not necessary.

6. Learned A.P.P. has not disputed that the applicant is attending police station as per the order. The bank viz., Bharat Coop.Bank Mumbai has forwarded to the Senior Inspector of Police, Bhandup Police Station, copies of the account opening form and resolution dated 8th April 1989 and account statement from 1st September 2005 till September 2006. Account is being operated by the applicant and the said Sanjeeva Pujari. The Learned A.P.P. states that the applicant is not extending cooperation inasmuch as all details as are sought and are necessary have not been forwarded.

7. Complainant's Advocate states that this is very serious issue inasmuch as, signatures of persons who are not alive have been forged and it is shown as if they have attended the meeting.

8. In my view, perusal of the material collected prima facie indicates that the dispute essentially is between two groups of Trustees who are aiming to take charge of the affairs of the Trust. The applicant has been admittedly working as Headmistress. She is part of the trust for nearly two decades. She has been appointed as Principal of the school from 1988. Further, the proceedings arising out of the change report are pending. In such proceedings, in the light of the decision of this Court, in the case of Jagat Narayan, reported in 1980 MH.L.J.22, enquiry which the Charity Commissioner has to conduct under section 22 of the Bombay Public Trust Act, 1950 is judicial in nature. Apart from the factum of change even legality and validity thereof needs to be gone into. Therefore, all contentions including the one pertaining to factum of change and whether a meeting at all was held and who attended the same and the proceeding bear signatures of those who attended or not are

essentially to be gone into in such proceedings. Further a civil suit at the instance of the present applicant is also pending. When two groups are there and the trust appears to be managed presently by the President, General Secretary and the applicant so also the affairs of the school are being looked after by her and where documents and records are with the Charity Commissioner it is not a case for custodial interrogation. Prima facie there is substance in the contention of Mr.Mundergi that criminal proceedings are a counter blast to the pending suit and are initiated being agitated by the factum of acceptance of change report by the Assistant/Deputy Charity Commissioner.

9. In this view of the matter, applicant deserves to be enlarged on bail in the event of her arrest in the subject C.R. Hence, the following order:-

i) In the event of the arrest of the applicant in connection with C.R.No.94 of 2006 registered with Bhandup Police Station, the applicant shall be enlarged on bail in the sum of Rs.25,000/- with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant will attend the Bhandup police station as and when summoned.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicant

shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)